

Formal Testing of Creational Law in Constitutional Court Decisions

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Abstract. As per Choice Number 91/PUU-XVIII/2020 of the Protected Court, a proper survey of the illegal Work Creation Regulation is restrictive yet active, with a two-year cutoff time for development. The formal law examination aims to ascertain the legitimacy of the stages, methods, and external forms of lawmaking. A regulation that is found to be conditionally unconstitutional during a formal examination theoretically does not have full legal force. As a result, it is critical to lead research on the traditional survey of the Gig Creation Regulation in the Established Court Number 91/PUU XVIII/2020 from a regulation standpoint. Conceptual and statutory legal normative methods are utilized in the research. secondary data gathered from literature research. To generate solutions to problems, all data are qualitatively processed. The outcomes demonstrate that inconsistent decisions result from the Constitutional Court's decision that the process for establishing the Job Creation Law is flawed, indecisiveness regarding restrictions on the suspension of government actions or policies that have a strategic and broad impact, as well as uncertainty regarding the enhancements to the P3 Law and the Job Creation Law. The government was forced to postpone the creation of the Job Creation Law's implementing regulations, amend the law to reflect the Constitutional Court's decision, and actively involve the community in its formation as a direct result of this.

Keywords: constitutional court decision; Job Creation Act; procedural review

1 Introduction

"Indonesia is a country based on law," is emphasized in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (also known as the 1945 Constitution of the Republic of Indonesia"). The obligation to adhere to the legality principle follows from the adoption of the rule of law. The standard of legitimacy implies that all administration activities should be founded on lawful and composed regulations and guidelines. The existence of laws and regulations is absolutely necessary for the application of the principle of legality.[1] Laws and regulations, according to Bagir Manan, serve both internal and external purposes. The internal function encompasses the functions of law creation, legal renewal, integration of legal pluralism, and legal certainty of statutory regulations as a legal subsystem. The social function of law, as well as the functions of change, stability, and convenience, are all part of the external function, which is the connection between laws and their places of application.[2]

One of the main statutory regulatory instruments is the law. Orders for a law to be regulated by law are among the provisions of the Republic of Indonesia's 1945 Constitution, The normative functions of the law include ratifying international agreements, putting decisions

made by the Constitutional Court into effect, and/or meeting societal legal requirements. Laws can meet the legal needs of society and align with the state's efforts to improve the public good.[3]

As a strategy to reform regulations in order to simplify regulations (simplification of laws and regulations) of obesity (hyper regulation), the Job Creation Law (UU Ciptaker) will be ratified and signed by President Joko Widodo on November 2, 2020. In addition to being able to cause disharmony or out of sync with various laws and regulations, it can also result in bureaucratic service. This is because with so many laws and regulations it is increasingly difficult to suppress the handover and/. [4]

Law No. 11 of 2020 (the "Job Creation Law") was enacted by the government to promote job creation. The following are some of the goals that were set for the Job Creation Law: providing cooperatives and UMK-M, as well as national industry and trade, with convenience, protection, and empowerment in an effort to accommodate the largest possible workforce of Indonesians while still paying attention to regional balance and progress within the national economy; creating and expanding employment opportunities. ensure that every citizen has a job, receives fair wages, and is treated fairly in the workplace; make changes in accordance with different administrative angles connected with arrangement, reinforcing, and security for cooperatives and UMK-M as well as public ventures; working with and speeding up public key tasks in light of public science and innovation and directed by the Pancasila philosophy, as well as making acclimations to different administrative viewpoints connected with further developing the venture biological system.[5]

The practice of altering and/or repealing multiple statutory regulations is known as "omnibus law," and its goal is to simplify (simplify) statutory regulations. Countries with common law and the Anglo Saxon legal system developed this approach. The idea of the omnibus law proposes addressing issues brought on by excessive regulation and overlap.

The omnibus law method, which consolidates 81 laws with 1,244 articles into a single law, was used to draft the Job Creation Law. Common law nations frequently employ the omnibus law method, such as the United States, which enacted the Omnibus Public Land Management Act of 2009, and the Philippines, which enacted the Omnibus Investment Code to reform investment-related laws. "The term "omnibus legislation" is defined by Barbara Sinclair as "legislation that addresses numerous subjects, issues, and programs, and is therefore typically highly complex and lengthy".

This understanding places an emphasis on a single law that contains numerous rules and regulations, but it is uncertain whether those rules and regulations are related to one another. Maria Farida Indrati, on the other hand, stated that the Omnibus Law is a new law that simplifies various applicable laws by including or regulating various substances and subjects.

The public has expressed opposition to the publication of the Job Creation Law as it has been implemented due to the formation process, which is regarded as haphazard. Examples of this include the absence of public participation in the preparation of the Law, technical administrative errors, errors in article references, differences in the number of articles and pages of the Law after it was passed by the DPR, and the substance, which is regarded as being detrimental to society, particularly in regard to the employment sector. " The Constitutional Court has the authority to review laws that violate the Constitution at the first and last levels, whose decision is final," according to Article 24C paragraph (1) of the 1945 Republic of Indonesia Constitution, a review can be carried out to the Constitutional Court (MK) if a law is deemed to be contrary to higher laws and regulations."

11 of the 12 cases examining the Job Creation Law were deemed inadmissible because they lacked legal standing and lost objects as a result of the formal review in Constitutional Court Decision 91/PUU-XVIII/2020 (MK Decision Number 91).

Formal testing is an effort to determine whether or not a legislative or executive product will pass the processes that have been established or regulated by applicable laws and regulations.

The Constitutional Court's decision is a significant moment in history because it granted the formal review request. According to the KoDe Inisiatif report, from 2003 to 2019, there were only 44 cases of formal trial and none of these cases were granted.

As for the several legal considerations of the Constitutional Court which rejected the applicant's arguments, among them (1) at most the Constitutional Court considered that the applicant's application had lost its object; (2) the applicant's argument is not proven; (3) there is a formal violation but it does not necessarily make the law deemed contrary to the 1945 Constitution of the Republic of Indonesia. This third thought is one of the fascinating things to study with regards to fix with the Sacred Court's choice in regards to the preliminary of the Gig Creation Regulation. Such considerations place the Constitutional Court prioritizing the principle of expediency in assessing and deciding on formal trials. This is due to the fact that the benefits are seen as greater than the harm so that even if the law is formed in a way that violates it, it is considered that it cannot be canceled, because in fact the benefits are greater than the harm that can arise if the law is canceled just because the formation is problematic.

Because this MK Decision has a significant impact on The formal review of the Law on Job Creation in Constitutional Court Decision Number 91/PUU-XVIII/2020 would be interesting to investigate, as would the existence and implementation of the Job Creation Law.

2 Methods

Data are collected, managed, analyzed, and concluded using the research method in accordance with the author's subject matter. The purpose of legal research is to investigate particular legal phenomena, or symptoms. A series of scientific activities based on methods, systematics, and a particular idea are used in legal research.

3 Discussion

Legal Considerations of the Constitutional Court Against the Decision Regarding the Decision of the Constitutional Court Number 91/PUU XVIII/2020

The requirements for submitting a request for a formal review have been established normatively on the basis of Article 51A paragraph 3 of the Constitutional Court's Law, which is connected to the Constitutional Court's Decision 79/PUU-XVII/2019. These requirements include:

- a. Examination of the implementation of procedures or procedures for forming laws, both in discussions and in making decisions on draft laws to become laws.
- b. Examination of the form (format) or systematics of the law.
- c. Examination regarding the authority of the institution that makes decisions in the process of forming laws; and

- d. Testing on other things that are not included in material testing.

In essence, the applicant argued in Constitutional Court Decision Number 91 that the Work Creation Regulation didn't follow the guidelines for making laws that are based on the Indonesian Constitution of 1945 and Law 12 of 2011 (UU P3), resulting in procedural and formal defects:

- a. The Job Creation Law does not follow the structure of the regulatory arrangement in Law 12 of 2011 or is in violation of it;
- b. The Job Creation Law violates the principles of clarity of purpose, usability and effectiveness, clarity of formulation, and transparency when it comes to the creation of laws and regulations.
- c. After receiving joint approval from the DPR and President, changes to the content violate both Article 72 paragraph 2 of the P3 Law and Article 20 paragraph 4 of the 1945 Constitution of the Republic of Indonesia.

The trial of the Job Creation Law was colored by various differences of opinion by the Constitutional Judges, so it is important to underline some of the following are some of the considerations that the Constitutional Court made regarding the case for an official examination of the Job Creation Law:

- As to 45-day cutoff time for recording a proper survey as per Sacred Court Choice Number 91 and Protected Court Choice Number 27/PUU-VII/2009, which was laid out 45 days after the law was distributed in the state newspaper. The Constitutional Court has 60 (six) days to examine a case that has been registered in the constitutional case registration book, as stated in Decision number 79/PUU-XVII/2019. The Constitutional Court, on the other hand, was of the opinion that the Review of the Job Creation Law was undergoing trial examination at the time Decision Number 79/2009 was read, so these provisions were not binding on the Constitutional Court when examining the Job Creation Law. However, the official review of the Job Creation Law did not begin until November 24, 2020, and the conclusion was not announced until November 25, 2021. Additionally, the COVID-19 pandemic caused trials at the Constitutional Court to be temporarily halted, and disagreements over.
- The Job Creation Law was drafted using the omnibus law method, according to the Constitutional Court.
- Apart from using the 1945 Constitution, UU P3 must also be used as a basis for carrying out a formal test, as stated in the opinion of the Constitutional Court in Decision Number 27/PUUVII/2009. Therefore, the drafting of laws must be in accordance with definite procedures and methods, standards and standards that bind all authorized institutions.
- The unclear form of the Job Creation Law in terms of the title, where the procedure for giving a title is standardized in Attachment I to Law 12/2011, both in terms of new laws, amendments, and revocations.
- The formulation of the Job Creation Law creates confusion, because as an amendment law, there are separate formulations of principles, objectives and scopes, causing overlap which leads to ambiguity/ambiguity in reading and understanding the Job Creation Law. The Constitutional Court considered that

the principle of clarity in the formulation required in UU P3 had not been fulfilled.

- It is not permissible, in light of the length of time it took to draft the Job Creation Law, to deviate from established procedures and standards in order to accomplish this objective. Due to the fact that, in a constitutionally democratic nation, efforts to achieve objectives cannot be carried out by breaking certain, standard, and standard procedures during the legislative process.
- The Constitutional Court was of the opinion that there were at least eight (eight) articles spread out across pages 151-152, 388, 390, 391, 374, 424, and 492-494 that underwent substantial changes between the texts before and after ratification. These changes were not just technical in nature and included errors in citations.
- Comparable to the Gig Creation Regulation, it is in opposition to the standards of lucidity of direction, the standards of proficiency and viability, the standards of clearness of plan, and the rule of straightforwardness. The Constitutional Court says that the omnibus law method was used to write the Job Creation Law.

Rules of Law of the Constitutional Court

It was necessary to declare the Job Creation Law to be formally flawed due to the fact that the Constitutional Court stated that the process of creating it did not adhere to the provisions of the 1945 Indonesian Constitution. Nevertheless, taking into consideration that the enactment of Law 11/2020 carries with it significant objectives, numerous implementing regulations have been issued, and many of them have even been put into practice. In order to avoid legal uncertainty and the greater impact it will have, the Job Creation Law must be conditionally declared unconstitutional, according to the Constitutional Court. This is due to the fact that the Constitutional Court must strike a balance between the requirements for making a law that must be met in order to guarantee the elements of justice, efficiency, and legal certainty. It must also take into account the strategic goals of establishing the status quo law.

The constitutional judges in their ruling ruled that this work copyright law was conditionally unconstitutional. It actually goes against the Constitutional Court's authority by issuing these actions, which are outside the scope of the Constitutional Court's appropriate actions. Whereas the MK decision should be final and binding and not issue a conditional unconstitutional term which does not provide clear certainty, namely that it has been formally recognized as illegal but the law still applies, of course this violates the rules and the MK should not decide this matter.

4 Conclusion

The Constitutional Court (MK) granted a portion of the request for a formal review of a law for the first time since it was established. The outcome of the trial as reflected in MK Decree No. 25 in 2021 on November 25, The loud reading of 91/PUU-XVIII/2020 stated that Law No. 11 of 2020, which dealt with the creation of positions, was ruled restrictively illegal. Muchtar Said, the Minangkabau Customary Court, Migrant Care, and the West Sumatra Nagari

Customary Density Coordinating Board all requested the decision. The choice's arrangements, in addition to other things, expressed that the Work Creation Regulation was disregarding the 1945 Constitution and needed contingent lawful power.

Legislators are given an opportunity by the Court to amend Law 11/2020 in accordance with the procedures for making laws and a specific method, standard, and standard for forming an omnibus law, which must also meet the requirements for a predetermined law to be formed. Because Law 11/2020 has been conditionally declared unconstitutional, enforcing it in its current form has legal ramifications.

References

- [1] E. E. Supriyanto, "Revitalization of Pancasila as a Solution to The Problems Faced by The Indonesian Nation," *J. Pendidik. Nusant.*, vol. 1, no. 2, pp. 52–61, 2021.
- [2] B. Manan and S. D. Harijanti, "Peraturan Pemerintah Pengganti Undang-Undang dalam Perspektif Ajaran Konstitusi dan Prinsip Negara Hukum," *PADJADJARAN J. Ilmu Huk. (Journal Law)*, vol. 4, no. 2, pp. 222–243, 2017, doi: 10.22304/pjih.v4n2.a1.
- [3] S. Syarif and S. Suparno, "Legal Ideal of Pancasila on Legal Politic in the Formulation of Laws and Regulations," 2021, doi: 10.4108/eai.6-3-2021.2306458.
- [4] D. A. Mustika, "Implementation Business Licensing Regulations Law Based Risk in the Act of Cipta OSS in Working through the Indonesia Country System," 2022, doi: 10.4108/eai.30-10-2021.2315775.
- [5] A. Supandi, P. Astuti, and W. Murti, "Determinants of Micro , Small and Medium Enterprise in West Java Province," *MIC 2021*, no. 2019, 2022, doi: 10.4108/eai.30-10-2021.2315826.